



PATENTS
UV-174

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

Appellants : M. Scott Reichardt et al.
Application No. : 09/731,115 Confirmation No. : 9203
Filed : December 6, 2000
For : SYSTEMS AND METHODS FOR COORDINATING
INTERACTIVE AND PASSIVE ADVERTISEMENT AND
MERCHANDISING OPPORTUNITIES
Art Unit : 2623
Examiner : Son P. Huynh

New York, NY 10036
April 16, 2008

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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Sir:

Appellants are filing this Appeal Brief in support of their appeal from the final rejection of claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80 in the final Office Action dated March 1, 2007 ("Final Office Action"). A Notice of Appeal for this case was filed on June 1, 2007 concurrently with a Pre-Appeal Brief Request for review. A Notice of Panel Decision for Pre-Appeal Brief Review dated October 23, 2007 indicated that there remains at least one actual issue for appeal.

The Director is hereby authorized to charge \$510.00 to Deposit Account No. 06-1075 in payment of the filing fee required under 37 C.F.R. § 41.20(b)(2). The Director is also hereby authorized to charge any additional fees that may be due in connection with this Appeal Brief, or credit any overpayment of the same, to Deposit Account No. 06-1075. A Transmittal Form (PTO-SB-21) is submitted herewith in duplicate for these purposes.

In view of the arguments and authorities set forth below, the Board should find the rejection of claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80 to be in error, and the Board should reverse the rejection.

This Brief has the following appendices:

Claims Appendix

Appendix A: Copy of claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80 involved in this appeal;

Evidence Appendices

Appendix B: Copy of the final Office Action dated March 1, 2007;

Appendix C: Copy of the Pre-Appeal Brief Request for Review dated June 1, 2007; and

Appendix D: Copy of Alexander et al. U.S. Patent No. 6,177,931 ("Alexander").

Related Proceedings Appendix

None.

(i) Real Party in Interest

Appellants respectfully advise the Board that the real party in interest in the above-identified patent application is United Video Properties, Inc., a corporation organized and existing under the laws of the State of Delaware, and having an office and place of business at 6922 Hollywood Boulevard, Los Angeles, CA 90028, which is the assignee of this application.

(ii) Related Appeals and Interferences

Appellants respectfully advise the Board that there are no other appeals or interferences known to appellants, their legal representative, or their assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(iii) Status of Claims

Claims 2, 9-17, 30, 37-45, 58, and 65-73 have been canceled. Claims 25-28, 53-56, and 81-84 are withdrawn as being directed toward a non-elected invention. Claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80 are finally rejected in this application and are on appeal.

(iv) Status of Amendments

Appellants have not submitted any amendments pursuant to 37 C.F.R. § 1.116 or in reply to the Final Office Action, from which this appeal is being sought.

(v) Summary of Claimed Subject Matter

Appellants' independent claims 1, 29, and 57 are directed to a method and systems for accessing a passive program guide or barker channel and interactive content from an interactive application. See, e.g., specification, page 3,

lines 10-19 and specification page 28, lines 29-30. A first interactive display is provided with a branded, selectable option that has a product brand logo graphic of a provider of the passive program guide or barker channel. See, e.g., specification, page 28, lines 18-25. A second display then replaces the first display in response to a user selecting the option. See, e.g., specification, page 29, lines 3-7. The second display that replaces the first display is provided with the passive program guide or barker channel and interactive content from the provider. See, e.g., specification, page 28, line 29 through specification, page 29, line 7 and for "interactive content" see, e.g., specification, page 30, lines 8-11. In response to the user selecting the interactive content, additional information on the interactive content is provided. See, e.g., specification, page 6, lines 9-16.

Appellants' independent claims 18, 46, and 74 are directed to a method and systems for providing advertisements within an interactive application. See, e.g., specification, page 35, lines 5-8. An advertisement associated with a brand is inserted into branded passive programming. See, e.g., specification, page 35, line 33 through page 36, line 2. An alert icon is overlaid on the currently displayed, branded passive programming, wherein the alert icon indicates that additional information associated with the currently displayed, branded passive programming is available. See, e.g., specification, page 37, line 31 through page 38, line 2. The user is provided with the opportunity to select the alert icon to indicate a desire to access the additional information. See, e.g., specification, page 38, line 2. In response to the user selection, an interactive display is provided that comprises an advertisement associated with the brand of branded, passive programming. See, e.g., specification, page 38, lines 2-7.

(vi) Ground of Rejection to be Reviewed on Appeal

The ground of rejection to be reviewed on this appeal is the final rejection of claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80 under 35 U.S.C. § 102(e) as being anticipated by Alexander.

(vii) Argument

A. Claims 1, 3-8, 29, 31-36, 57, and 59-64

Appellants' independent claims 1, 29, and 57 are directed to a method and systems for accessing a passive program guide or barker channel and interactive content from an interactive application. A branded selectable option having a product brand logo of a provider (e.g., TV Guide) is provided in a first interactive application display. In response to a user selecting the branded selectable option, a barker channel or passive program guide and interactive content (e.g., a user-selectable alert icon overlaid on the barker channel or passive program guide) are provided in a second display that replaces the first display. In this way, a user may link to a special passive video product containing interactive content from an interactive application display (e.g., an interactive media guidance application display).

1. The Examiner's Interpretation of Appellants' Claimed Barker Channel is Unreasonably Broad

Although appellants realize that claims must be given their broadest reasonable interpretation, appellants respectfully submit that the Examiner's interpretation of appellants' independent claims 1, 29, and 57 is unreasonable. Each of appellants' independent claims 1, 29, and 57 recites providing a "passive program guide or barker channel and

interactive content" in response to selecting a branded selectable option in an interactive display. In the Final Office Action, the Examiner equates a barker channel with a "television program, video clip, or other information associated with a particular channel" (Final Office Action, page 6). Therefore, it is the Examiner's position that appellants' claimed barker channel includes any video clip, television program, or advertisement that is displayed in a PIP window or advertisement window, like Alexander's PIP Window 12 or Ad Windows 14 and 16. See Final Office Action, pages 6-7. Appellants submit that this interpretation is particularly unreasonable because (1) it is inconsistent with the term "barker channel" as widely understood by those skilled in the art and (2) it is inconsistent with the express definition (which is consistent with the widely understood meaning) provided in appellants' specification.

Appellants remind the Board that claim terms must be given their broadest reasonable interpretation "in light of the specification." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (emphasis added); MPEP § 2111. Appellants' specification clearly describes a barker channel, and barker channels were also well-known in the art at the time appellants' invention was made. Barker channels are dedicated promotional television channels that display full-screen promotions. Typically, the barker channel promotions are for pay-per-view programs. See specification, page 2, lines 27-32. Equating barker channels with any television program or video clip associated with a particular channel is overbroad and unreasonable. Alexander fails to show or suggest providing a passive program guide or a barker channel and interactive content in response to selecting a branded selectable option. For this reason alone, appellants submit that the 35 U.S.C §

102(e) rejection of independent claims 1, 29, and 57, and any claims depending therefrom, should be overturned.

2. Even If the Content Shown in Alexander's PIP Window or Ad Windows Could Be Considered a Barker Channel, It Would Still Not Replace a First Interactive Display

The Examiner also maintains that Alexander shows an interactive application display screen containing a branded selectable option having a product brand logo graphic and interactive content. See Final Office Action, pages 3-4. The Examiner further contends that this interactive application display screen is replaced with a second display screen that contains the passive program guide or barker channel and interactive content. *Id.*

The Examiner clarifies his position in the Final Office Action and states that the first interactive display is interpreted to be Alexander's entire FIG. 5 display screen (PIP window and interactive program guide) before a particular television program or particular icon or window is selected by the user, and the second display is interpreted to be Alexander's same entire FIG. 5 display screen after the user has selected a particular television program or particular icon or window. See Final Office Action, page 3.

Appellants submit that the notion that a first display is replaced by a second display when an area of the first display (e.g., a PIP window) is filled with content is unreasonable. Appellants' claims 1, 29, and 57 clearly specify that the first interactive application display (Alexander's entire FIG. 5 display screen, according to the Examiner) is replaced by a second display containing the passive program

guide or barker channel. If the Examiner considers Alexander's entire FIG. 5 display screen as the first interactive application display, then this entire display must be replaced by the passive program guide or barker channel and interactive content.

For this additional reason, appellants submit that the 35 U.S.C. § 102(e) rejection of independent claims 1, 29, and 57, and any claims depending therefrom, should be overturned.

B. Claims 18-24, 46-52, and 74-80

Appellants' independent claims 18, 46, and 74 are directed to systems and a method for providing advertisements within an interactive application. Branded passive programming with an advertisement associated with a brand inserted into the passive programming is provided to the user equipment. An alert icon, which is overlaid on the currently displayed branded passive programming, is displayed on the user equipment to indicate the availability of additional information associated with the currently displayed branded passive programming. A user is provided with an opportunity to select the alert icon to indicate a desire to access the additional information. In response to the user selection, an interactive display is provided on the user equipment that includes an advertisement associated with the brand of the branded passive programming.

The Examiner contends that Alexander provides branded passive programming with an advertisement associated with a brand inserted into the passive programming to the user equipment. See Final Office Action, page 4. The Examiner cites a portion of Alexander that described automatically tuning a user to a particular advertising channel during the telecast of a television program. See Final Office Action, pages 4-5. The television may be automatically tuned back to the viewer's

chosen television program after the advertisement is finished. See Alexander, col. 32, line 61 - col. 33, line 8. According to the Examiner, this feature meets appellants' claimed branded passive programming limitation. Appellants respectfully disagree and submit that the Examiner's interpretation is unreasonable.

Alexander merely states that a "change channel command" may be inserted into the Vertical Blanking Interface when an advertisement is telecast, causing the television to tune to a particular channel. See Alexander, col. 33, lines 1-8. However, appellants' independent claims 18, 46, and 74 each recite providing "branded passive programming with an advertisement inserted into the passive programming" to the user equipment. Since appellants' claims require the branded passive programming to be provided to the user equipment, the branding must occur prior to sending the programming to the user equipment. As explained in appellants' specification, "programming may be branded by the source of the programming, main facility 12, distribution facility 16, Internet service system 235, or at any other suitable facility" (specification, page 44). Thus, branded passive programming is programming with an advertisement actually inserted into the programming video source. This is consistent with the commonly understood meaning of branded programming. The Examiner's contention that Alexander's channel change command is an instance of program branding is unreasonable.

Moreover, appellants' independent claims 18, 46, and 74 recite that the advertisement is associated with the brand of the branded passive programming, not the passive programming itself. In the Final Office Action, the Examiner interprets appellants' claimed advertisement as a "video clip, detail description, website, chat room" related to the passive

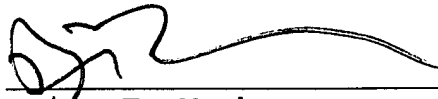
programming or the programming being viewed immediately before the advertisement is displayed. See Final Office Action, page 4 and Alexander, col. 33, lines 26-50. The Examiner has not pointed to any disclosure in Alexander that shows that the advertisement is associated with the brand (e.g., TV Guide) of any branded passive programming.

For at least the foregoing reasons, appellants submit that 35 U.S.C. § 102(e) rejection of independent claims 18, 46, and 74, and any claims depending therefrom, should be overturned.

C. Conclusion

For the foregoing reasons, appellants submit that Alexander does not anticipate any of appellants' claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80. The Final Office Action's rejection of these claims under 35 U.S.C. § 102(e) should therefore be reversed.

Respectfully submitted,



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(viii) Claims Appendix

CLAIMS APPENDIX A
CLAIMS ON APPEAL

1. A method for providing access to a passive program guide or barker channel and interactive content from an interactive application comprising:

providing a branded selectable option having a product brand logo graphic of a provider of the passive program guide or barker channel and interactive content within a first interactive application display;

providing, in a second display replacing the first display, the passive program guide or barker channel and interactive content from the provider in response to a user selecting the option from the interactive application display; and

providing additional information on the interactive content in response to the user selecting the interactive content.

3. The method defined in claim 1 wherein:
the interactive content comprises an alert icon;
and

providing additional information on the interactive content comprises providing a merchandising opportunity to the user in response to the user selecting the alert icon.

4. The method defined in claim 3 wherein the alert icon is overlaid onto the passive program guide or barker channel.

5. The method defined in claim 1 wherein:
the interactive content comprises a television program listing; and
providing additional information on the interactive content comprises providing additional information for the television program listing in response to the user selecting the television program listing.

6. The method defined in claim 1 wherein:
the interactive application is an interactive television program guide; and
the branded selectable option is a branded selectable menu option of the interactive television program guide.

7. The method defined in claim 1 wherein the interactive application is a web browser.

8. The method defined in claim 1 wherein providing the passive program guide or barker channel comprises tuning equipment associated with the user to a television channel.

18. A method for providing advertisements within an interactive application implemented at least in part on user equipment comprising:

providing branded passive programming with an advertisement associated with a brand inserted into the passive programming to the user equipment;

displaying on the user equipment an alert icon overlaid on the currently displayed branded passive programming that indicates availability of additional information associated with the currently displayed branded passive programming;

providing a user associated with the user equipment with an opportunity to select the alert icon to indicate a desire to access the additional information; and

providing an interactive display on the user equipment in response to the user selection, wherein the display comprises an advertisement associated with the brand of the currently displayed branded passive programming.

19. The method defined in claim 18 wherein the passive programming is a television program, a commercial, a pay-per-view program, or a passive video product segment.

20. The method defined in claim 18 further comprising retrieving the advertisement.

21. The method defined in claim 20 wherein retrieving the advertisement comprises retrieving the advertisement according to a schedule.

22. The method defined in claim 20 wherein retrieving the advertisement comprises retrieving the advertisement according to a real-time flag.

23. The method defined in claim 18 wherein the interactive application is an interactive television program guide, an operating system, a home shopping application, or a web browser.

24. The method defined in claim 18 wherein:
the interactive application is an interactive television program guide; and

providing the interactive display comprises providing the advertisement as a panel advertisement in an interactive television program guide display.

29. A system for providing access to a passive program guide or barker channel and interactive content from an interactive application comprising:

means for providing a branded selectable option having a product brand logo graphic of a provider of the passive program guide or barker channel and interactive content within a first interactive application display;

means for providing, in a second display replacing the first display, the passive program guide or barker channel and interactive content from the provider in response to a user selecting the option from the interactive application display; and

means for providing additional information on the interactive content in response to the user selecting the interactive content.

31. The system defined in claim 29 wherein:

the interactive content comprises an alert icon;

and

the means for providing additional information on the interactive content comprises means for providing a merchandising opportunity to the user in response to the user selecting the alert icon.

32. The system defined in claim 31 wherein the alert icon is overlaid onto the passive program guide or barker channel.

33. The system defined in claim 29 wherein:
the interactive content comprises a television program listing; and
the means for providing additional information on the interactive content comprises means for providing additional information for the television program listing in response to the user selecting the television program listing.

34. The system defined in claim 29 wherein:
the interactive application is an interactive television program guide; and
the branded selectable option is a branded selectable menu option of the interactive television program guide.

35. The system defined in claim 29 wherein the interactive application is a web browser.

36. The system defined in claim 29 wherein the means for providing the passive program guide or barker channel comprises means for tuning equipment associated with the user to a television channel.

46. A system for providing advertisements within an interactive application running at least in part on user equipment comprising:

means for providing branded passive programming with an advertisement associated with a brand inserted into the passive programming to the user equipment;

means for displaying on the user equipment an alert icon overlaid on the currently displayed branded passive programming that indicates availability of additional

information associated with the currently displayed branded passive programming;

means for providing a user associated with the user equipment with an opportunity to select the alert icon to indicate a desire to access the additional information; and

means for providing an interactive display on the user equipment in response to the user selection, wherein the display comprises an advertisement associated with the brand of the currently displayed branded passive programming.

47. The system defined in claim 46 wherein the passive programming is a television program, a commercial, a pay-per-view program, or a passive video product segment.

48. The system defined in claim 46 further comprising means for retrieving the advertisement.

49. The system defined in claim 48 wherein the means for retrieving an advertisement comprises retrieving an advertisement according to a schedule.

50. The system defined in claim 48 wherein the means for retrieving an advertisement comprises retrieving an advertisement according to a real-time flag.

51. The system defined in claim 46 wherein the interactive application is an interactive television program guide, an operating system, a home shopping application, or a web browser.

52. The system defined in claim 46 wherein:

the interactive application is an interactive television program guide; and

the means for providing the interactive display comprises means for providing the advertisement as a panel advertisement in an interactive television program guide display.

57. A system for providing access to a passive program guide or barker channel and interactive content from an interactive application comprising:

user equipment on which an interactive application is at least partly implemented, wherein the interactive application is configured to:

provide a first display on the user equipment, wherein the first display comprises a branded selectable option having a product brand logo graphic of a provider of the passive program guide or barker channel and interactive content;

provide a second display on the user equipment replacing the first display comprising the passive program guide or barker channel and interactive content from the provider in response to a user selecting the option; and

provide, on the user equipment, additional information on the interactive content in response to the user selecting the interactive content.

59. The system defined in claim 57 wherein:

the interactive content comprises an alert icon;
and

the additional information comprises a merchandising opportunity.

60. The system defined in claim 59 wherein the alert icon is overlaid onto the passive program guide or barker channel.

61. The system defined in claim 57 wherein:
the interactive content comprises a television program listing; and
the additional information comprises additional information for the television program listing.

62. The system defined in claim 57 wherein:
the interactive application is an interactive television program guide; and
the branded selectable option is a branded selectable menu option of the interactive television program guide.

63. The system defined in claim 57 wherein the interactive application is a web browser.

64. The system defined in claim 57 wherein the interactive application is configured to provide the passive programming by tuning the user equipment to a television channel on which the passive programming is provided.

74. A system for providing advertisements within an interactive application comprising:

user equipment on which an interactive application is at least partly implemented, wherein the interactive application is configured to:

provide a display on the user equipment, wherein the display comprises branded passive programming with an

advertisement associated with a brand inserted into the passive programming;

display on the user equipment an alert icon overlaid on the currently displayed branded passive programming that indicates availability of additional information associated with the currently displayed branded passive programming;

provide a user with an opportunity to select the alert icon to indicate a desire to access the additional information; and

provide a display in response to the user selection, wherein the display comprises an advertisement associated with the brand of the currently displayed branded passive programming.

75. The system defined in claim 74 wherein the passive programming is a television program, a commercial, a pay-per-view program, or a passive video product segment.

76. The system defined in claim 74 wherein the interactive application is further configured to retrieve the advertisement.

77. The system defined in claim 74 wherein the interactive application is further configured to retrieve the advertisement according to a schedule.

78. The system defined in claim 74 wherein the interactive application is further configured to retrieve the advertisement according to a real-time flag.

79. The system defined in claim 74 wherein the interactive application is an interactive television program

guide, an operating system, a home shopping application, or a web browser.

80. The system defined in claim 74 wherein:

the interactive application is an interactive television program guide; and

the interactive television program guide is configured to provide the advertisement as a panel advertisement.

(ix) Evidence Appendix

EVIDENCE APPENDIX B
COPY OF FINAL OFFICE ACTION
DATED MARCH 1, 2007



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/731,115	12/06/2000	M. Scott Reichardt	UV-174	9203
7590 Richard M. Feustel, Jr. FISH & NEAVE 1251 Avenue of the Americas New York, NY 10020-1104			EXAMINER HUYNH, SON P	
			ART UNIT 2623	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE 3 MONTHS			MAIL DATE 03/01/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

RECEIVED

MAR 09 2007

ROPER & GRAY LLP - PATENT DEPT.
REFERRED TO: JMG/EM
NOTED BY: _____

File No: UV/174
Action Desc: Response to Final OA / notice of Appeal
Due Date: 6-1-07
By: W

Office Action Summary	Application No.	Applicant(s)	
	09/731,115	REICHARDT ET AL	
	Examiner	Art Unit	
	Son P. Huynh	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.138(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,18-29,31-36,46-57,59-64 and 74-84 is/are pending in the application.
- 4a) Of the above claim(s) 25-28,53-56 and 81-84 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,18-24,29,31-36,46-52,57,59-64 and 74-80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-848) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 03/17/2006 with respect to amended claims 1,3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, 74-80 have been fully considered but they are not persuasive.

Applicant argues regarding claims 1, 3-8, 29, 31-36, 57, 59-64 as amended, that Alexander does not disclose videos show passive program guide or barker channels, as amended in independent claims 1, 29, and 57. In addition, Alexander's PIP window does not replace a first display containing both "a branded selectable option having a product brand logo... and interactive content, " as also recited by independent claims 1, 29, and 57 (page 18, paragraphs 2-3).

In response, this argument is respectfully traversed. Amended claims 1, 29, and 57, neither recite "video show passive program guide or barker channels" nor "PIP window replace a first display containing both a branded selectable option having product brand logo... and interactive content". The Examiner did not interpreted the first display is the PIP window only, but instead, the Examiner interpreted the "first interactive application display" is the display screen within interactive icon/window including PIP window before the particular program/icon is selected/highlighted (see the Office Action page 4, page 8, paragraph 2).

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In addition, independent claims 1, 29, and 57 recites "...providing access to a passive program guide or barker channel" and "...of the passive program guide or barker channel", and "providing, in a second display replacing the first display".

Alexander discloses when the user highlights a program associated with a channel on the program guide, the video/video clip of the highlighted channel is displayed on the portion of the display screen (e.g. PIP window, or ad window) – see include, but is not limited to, figures 1-7, 8-10, col. 3, lines 56-62, col. 4, lines 15-43, col. 13, lines 61-63, col. 17, lines 40-67, col. 19, lines 15-45, col. 20, lines 1-28, col. 26, lines 4-18). Thus, the feature of "providing access to a passive program guide or barker channel" is interpreted as providing access to barker channel (e.g. channel that provides video or video clip or information of the selected television program). Alexander further discloses when the user selects a program title on the Grid Guide or highlights the ad window, additional information and/or real time video or video clip of the selected/highlighted television program is displayed on the display screen (see include, but is not limited to, figures 1-7, 8-10, col. 3, lines 56-62, col. 4, lines 15-43, col. 13, lines 61-63, col. 17, lines 40-67, col. 19, lines 15-45, col. 20, lines 1-28, col. 26, lines 4-18). Thus, the claims "first interactive application display" is interpreted as the display screen with interactive icons/windows before a particular television program or particular icon/window is highlighted/selected, and "a second display replacing the first display" is interpreted as the television display (display screen with additional information or content of the selected television program), after the user selected/highlighted particular icon/television program title replaces the display screen (display screen without

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information of the selected title/icon), before the particular title/icon is highlighted/selected.

Applicant further argues the Applicant's invention patentably improves upon Alexander by "providing an interactive display on the user equipment in response to the user selection, wherein the display comprises an advertisement associated with the brand of the currently displayed branded passive programming" (page 19, paragraph 2).

In response, this argument is respectfully traversed. Independent claims 18, 46, and 74, as amended, recite the limitation "providing branded passive programming with an advertisement associated with a brand inserted into the passive programming to the user equipment". Alexander discloses the advertisement is selected based on particular television being viewed/selected (see include, but is not limited to, col. 33, lines 26-50, col. 34, line 55-col. 35, line 13). Alexander also discloses...by tuning the television automatically to a particular advertising channel at the time during the telecast of the television program during which an advertisement is scheduled to occur, and by then tuning the television back to the viewer's chosen television program at the conclusion of the advertisement (see include, but is not limited to, col. 32, line 61-col. 33, line 8). Thus, the limitation of "providing branded passive programming with an advertisement associated with a brand inserted into the passive programming to the user equipment" is interpreted as providing the program (e.g. user chosen television program) with an advertisement associated with the channel/provider, etc. of chosen program and

inserted the advertisement to display during the telecast of the chosen television program to the user television device.

For reasons give above, rejections on claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, 74-80 are analyzed as discussed below.

Claims 25-28, 53-56, 81-84 have been withdrawn.

Claims 2, 9-17, 30, 37-45, 58, 65-73 have been canceled.

Claim Objections

2. Claims 1, 3-8, 29, 31-36 are objected to because of the following informalities:

In claims 1 and 29, the limitation "the first display" and "the interactive application display" in lines 8-9, 11-12 of claim 1 and lines 9, 11-12 of claim 29, should be replaced as – the first interactive application display—

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 2623

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, 74-80 are rejected under 35 U.S.C. 102(e) as being anticipated by Alexander et al. (US 6,177,931).

Regarding claim 1, Alexander teaches a method for providing access to a passive program guide or barker channel (providing access to backer channel such as television program, video clip, or other information associated with particular channel displayed on particular portion of the display screen) and interactive content (e.g. icon/advertisement/detail information) from an interactive application (Interactive program guide on screen 10 – figures 1, 5, 9), comprising:

providing a branded selectable option having a product brand logo graphic of a provider of the passive program guide or barker channel and interactive content (providing an EPG screen with selectable interactive ads windows 14,16, Grid guide 22, PIP window, etc. with interactive icons having logo graphic of a provider e.g., FOX, CBS, etc. of the barker channel (e.g. news program/ad, television program, video clip, etc. of the associated channel) and interactive content (e.g., web address, ad information, detail information, etc.– see including, but are note limited to, figures 1-7, 8-10, col. 3, lines 56-62, col. 4, lines 15-43, col. 13, lines 50-63, col. 17, lines 40-67, col. 19, lines 15-45, col. 20, lines 1-28, col. 24, lines 45-55, col. 26, lines 4-18) within an

interactive application display (within interactive program guide before the ad/icon/provider is selected/highlighted- figure 1);

providing, in a second display replacing the first display (interpreted as the display after the new icon/ad/provider, etc. is selected/highlighted that replacing previous display – figures 1-7, 8-10, col. 3, lines 56-62, col. 4, lines 15-43, col. 13, lines 61-67, col. 14, line 48-col. 15, line 31, col. 17, lines 40-67, col. 18, lines 13-67, col. 19, lines 15-45, col. 20, lines 1-28, col. 26, lines 4-18), the passive program guide or barker channel and interactive content from the provider in response to a user selecting the option from the interactive application display is met by providing television program, video clip, or information associated with a particular channel (e.g. selected channel) and interactive content such as icon of detail information, icon of provider, web address, etc., that is associated with the selected/highlighted icon/ad/provider, from the provider such as advertiser, CBS provider, FOX provider, etc. in response to a viewer selecting/highlighting an icon/ad window from the interactive program guide (see include, but are not limited to, col. 3, lines 56-62, col. 4, lines 13-61; col. 5, lines 5-14; col. 8, lines 4-17, lines 45-64; col. 10, lines 43-51, col. 13, lines 46-67; col. 14, line 47-col. 15, line 31; col. 17, lines 40-67, col. 18, line 15-col. 19, line 45, col. 20, lines 1-28, col. 26, lines 4-18);

“providing additional information on the interactive content in response to the user selecting the interactive content” is met by providing detail information in response to user selection of the ad/provider/channel/title icon or providing additional detail

information in response to user selection of the detail icon (see include, but are not limited to, figure 5, 9-10b, col. 17, lines 45-65).

Regarding claim 3, the additional claimed featured for the interactive content comprises an alert icon is met by the interactive icons on the interactive program guide (figure 1) or icon of the on screen notifications (col. 15, lines 5-22);

the additional claimed feature of providing additional information on the interactive content comprises providing a merchandising opportunity to the user in response to the user selecting of the alert icon is met by providing additional information of the interactive content comprises detail information of the television program or merchandise such as detailed textual description of the program, information about actors and actresses, information about production of the program, production related information, etc. in response to user selecting of the interactive icon (col. 14, line 50-col. 15, line 22; col. 15, lines 47-50; col. 17, line 50-col. 18, line 67, figures 1, 5,6).

Regarding claim 4, the additional claimed feature of the alert icon is overlaid onto the passive program guide or barker channel is met by the interactive program guide or the on screen notification icon is overlaid onto full screen television program (col. 3, lines 55-61; col. 7, lines 20-30; col. 15, lines 4-20).

Regarding claim 5, the additional feature of the interactive content comprises a television program listing is met by television interactive program guide (figure 1, col. 7,

lines 19-30) or a title/channel of program that may be of interest to viewer provided as on screen notification (col. 14, lines 48-67);

the further claimed feature of providing additional information on the interactive content comprises providing additional information for the television program listing in response to the user selecting the television program listing is met by providing the entire title and detail description/additional detail description of the program in response to user selecting a particular icon/detail information on the interactive television guide (figure 1 and col. 15, lines 52-64, col. 17, line 45-col. 18, line 67).

Regarding claim 6, the additional claimed feature of the interactive program application is an interactive television guide is met by interactive program guide on screen (10 – figure 1); and the further claimed feature of the branded selectable option is a branded selection menu option of the interactive television guide is met by interactive grid guide and/or interactive ads windows and/or icon/provider on the interactive program guide (figures 1, 5).

Regarding claim 7, Alexander discloses data in the interactive program guide can be downloaded from Internet and displayed on the screen (col. 8, lines 36-64; col. 18, lines 1-67). Inherently, the interactive application is a web browser for displaying the downloaded data.

Regarding claim 8, the further claimed feature of providing the passive program guide or barker channel comprises tuning equipment associated with the user to a television channel is met by providing the television program/on screen notification, additional information, etc. comprises tuner associated with the viewer to a television channel (col. 7, lines 10-18; col. 30, line 60-col. 31, line 8).

Regarding claim 18, Alexander discloses a method for providing advertisements within an interactive application implemented at least in part on user equipment (figure 1) comprising:

providing branded passive programming associated with an advertisement with a brand inserted into the passive programming to the user equipment (e.g., providing television programming associated with an advertisement with provider/source/ network such as CBS, advertiser, FOX, etc. inserted during the telecast of chosen television program to the viewer equipment – see include, but is not limited to, figure 5, col. 6, line 65-col. 7, line 18, col. 32, line 61-col. 33, line 8, col. 33, lines 26-50, col. 34, line 55-col. 35, line 13);

displaying on the user equipment an alert icon overlaid on the currently displayed branded passive programming that indicates availability of additional information associated with the currently displayed branded passive programming (e.g. displaying on the user display screen an on screen notification/icon/title/channel, etc. overlaid the program being viewed that indicates any number of possible items of information associated with the program being viewed, or indicates the availability of additional

information by displaying an detail information icon – figure 1, 3, 6,8 –10b; col. 7, lines 19-30; col. 14, line 48-col. 15, line 31; col. 17, col. 17, line 40-col. 18, line 67);

providing a user associated with the user equipment with an opportunity to select the alert icon to indicate a desire to access additional information associated with the branded passive programming (providing a viewer associated with the user television equipment with an opportunity to select the on screen notification/icon/channel, title, detail icon, or any icon on the screen display using remote control device and user interface to indicate a desire to access additional information associated with the program – col. 17, lines 48-67, col. 18, lines 33-67);

providing an interactive display on the user equipment in response to the user selection, wherein the display comprises an advertisement associated with the brand of the currently displayed branded passive programming (e.g. providing an interactive display such as another interactive program guide display that comprises selected/highlighted icon, or web site, or advertisements in response to user selection/highlight of an icon, a program, an ad, etc. wherein the new display screen comprises a new advertisement (i.e. video clip, detail description, website, chat room, etc) associated with the brand of program currently displayed – see including, but are not limited to, col. 17, lines 48-67; col. 18, line 33-col. 19, line 45; col. 19, line 62-col. 20, line 12, col. 26, line 57-col. 27, line 2; col. 34, line 10-col. 35, line 18).

Regarding claim 19, the further claimed feature of the passive programming is a television program, a commercial, a pay per view program, or a passive video product

Regarding claim 24, Alexander further discloses the interactive application is an interactive television program guide (interactive program guide – figure 1); and providing the advertisement in the interactive application display comprises providing the advertisement as a panel advertisement (Ad windows or Grid guide) in the interactive television program guide (interactive program guide) – figure 1.

Regarding claims 29, 31-36, 46-52, the limitations of the system as claimed correspond to the limitations of the method as claimed in claims 1, 3-8, 18-24, and are analyzed as discussed with respect to the rejection of claims 1,3-8, 18-24.

Regarding claims 57, 59-64, 74-80, the limitations of the system as claimed correspond to the limitations of the method as claimed in claims 1,3-8, 18-24, and are analyzed as discussed with respect to the rejection of claims 1, 3-8, 18-24.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bruck et al. (US 7,143,428 B1) discloses concurrent viewing of a video programming and of text communication concerning the video programming.

Knowles et al. (US 6,505,348 B1) discloses multiple interactive electronic program guide system and methods.

Jerding et al. (US 7,010,801 B1) discloses video on demand system with parameter-controlled bandwidth deallocation.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son P. Huynh whose telephone number is 571-272-7295. The examiner can normally be reached on 9:00 - 6:30.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Son P. Huynh

February 21, 2007


CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
BIOLOGY CENTER 2600

Notice of References Cited	Application/Control No. 09/731,115	Applicant(s)/Patent Under Reexamination REICHARDT ET AL.	
	Examiner Son P. Huynh	Art Unit 2623	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-6,505,348	01-2003	Knowles et al.	725/49
*	B	US-7,010,801	03-2006	Jerding et al.	725/95
*	C	US-7,143,428	11-2006	Bruck et al.	725/37
*	D	US-6,006,257	12-1999	Slezak, Robert J.	725/110
*	E	US-6,698,020	02-2004	Zigmond et al.	725/34
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

EVIDENCE APPENDIX C
COPY OF PRE-APPEAL BRIEF REQUEST FOR REVIEW
DATED JUNE 1, 2007



Express Mail No.: EM015924112US

PATENTS
UV-174

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

Applicants : M. Scott Reichardt et al.
Application No. : 09/731,115 Confirmation No. : 9203
Filed : December 6, 2000
For : SYSTEMS AND METHODS FOR COORDINATING
INTERACTIVE AND PASSIVE ADVERTISEMENT AND
MERCHANDISING OPPORTUNITIES
Art Unit : 2623
Examiner : Son P. Huynh

New York, NY 10036
June 1, 2007

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Pursuant to 1296 Off. Gaz. 2 (July 12, 2005), applicants request review of the rejection of claims 1, 3-8, 18-29, 31-39, 46-57, 59-64, and 74-84 in the above-identified application. No amendments are being submitted with this Request. This Request is being filed with a Notice of Appeal.

ARGUMENTS

I. Introduction

Claims 1, 3-8, 18-29, 31-36, 46-57, 59-64, and 74-84 are pending in this application. Claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Alexander et al. U.S. Patent 6,177,931 (hereinafter "Alexander"). Applicants respectfully traverse the § 102(e) rejections.

II. Applicants' Reply to the 35 U.S.C. § 102(e) Rejections

Applicants' invention is generally directed to coordinating advertising and merchandising opportunities across interactive application and various passive video products, such as passive program guides and barker channels. *See* specification, page 3, lines 10-19. Applicants' claimed invention facilitates the integration of passive program guides and barker channels with interactive applications by providing various branded selectable options that link to special passive video products and interactive content. *See* specification, pages 40-45 and FIGS. 12-15. For example, an interactive alert icon may be overlaid onto a passive program guide or barker channel. A user may select this interactive alert icon to link to advertising or merchandising opportunities.

A. Independent Claims 1, 29, and 57

Applicants' independent claims 1, 29, and 57 are directed to a method and systems for accessing a passive program guide or barker channel and interactive content from an interactive application. A branded selectable option having a product brand logo of a provider (e.g., TV Guide) is provided in a first interactive application display. In response to a user selecting the branded selectable option, a barker channel or passive program guide and interactive content (e.g., a user-selectable alert icon overlaid on the barker channel or passive program guide) are provided in a second display that replaces the first display. In this way, a user may link to a special passive video product containing interactive content from an interactive application display (e.g., an interactive media guidance application display).

1. The Examiner's Interpretation of Applicants' Claimed Barker Channel is Unreasonably Broad

Although applicants realize that claims must be given their broadest reasonable interpretation, applicants respectfully submit that the Examiner's interpretation of applicants' independent claims 1, 29, and 57 is unreasonable. Each of applicants' independent claims 1, 29, and 57 recites providing a "passive program guide or barker channel and interactive content" in response to selecting a branded selectable option in an interactive display. In the Office Action, the Examiner equates a barker channel with a "television program, video clip, or other information associated with a particular channel" (Office Action, page 6). Therefore, it is the Examiner's position that applicants' claimed barker channel includes any video clip, television

program, or advertisement that is displayed in a PIP window or advertisement window, like Alexander's PIP Window 12 or Ad Windows 14 and 16. *See* Office Action, pages 6-7.

Applicants submit that this interpretation is particularly unreasonable because (1) it is inconsistent with the term "barker channel" as widely understood by those skilled in the art and (2) it is inconsistent with the express definition (which is consistent with the widely understood meaning) provided in applicants' specification.

Applicants remind the Examiner that claim terms must be given their broadest reasonable interpretation "in light of the specification." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (emphasis added); MPEP § 2111. Applicants' specification clearly describes a barker channel, and barker channels were also well-known in the art at the time applicants' invention was made. Barker channels are dedicated promotional television channels that display full-screen promotions. Typically, the barker channel promotions are for pay-per-view programs. *See* specification, page 2, lines 27-32. Equating barker channels with any television program or video clip associated with a particular channel is overbroad and unreasonable. For this reason alone, applicants submit that independent claims 1, 29, and 57 are patentable over Alexander.

2. Even If the Content Shown in Alexander's PIP Window or Ad Windows Could Be Considered a Barker Channel, It Would Still Not Replace a First Interactive Display

The Examiner also maintains that Alexander shows an interactive application display screen containing a branded selectable option having a product brand logo graphic and interactive content. *See* Office Action, pages 3-4. The Examiner further contends that this interactive application display screen is replaced with a second display screen that contains the passive program guide or barker channel and interactive content. *Id.*

The Examiner clarifies his position in the Office Action and states that the first interactive display is interpreted to be Alexander's entire FIG. 5 display screen (PIP window and interactive program guide) before a particular television program or particular icon or window is selected by the user, and the second display is interpreted to be Alexander's entire FIG. 5 display screen after the user has selected a particular television program or particular icon or window. *See* Office Action, page 3.

Applicants submit that the notion that a first display is replaced by a second display when an area of the first display (e.g., a PIP window) is filled with content is unreasonable. Applicants' claims 1, 29, and 57 clearly specify that the first interactive application display (Alexander's entire FIG. 5 display screen, according to the Examiner) is replaced by a second display containing the passive program guide or barker channel. If the Examiner considers Alexander's entire FIG. 5 display screen as the first interactive application display, then this entire display must be replaced by the passive program guide or barker channel and interactive content.

For at least the foregoing reasons, applicants submit that independent claims 1, 29, and 57 are patentable over Alexander. Applicants respectfully request, therefore, that the rejection of these claims (as well as dependent claims 3-8, 31-36, and 59-64) under 35 U.S.C. § 102(e) be withdrawn.

B. Independent Claims 18, 46, and 74

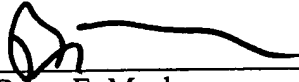
Applicants' independent claims 18, 46, and 74 are directed to systems and a method for providing advertisements within an interactive application. Branded passive programming with an advertisement associated with a brand inserted into the passive programming is provided to the user equipment. An alert icon is displayed on the user equipment overlaid on the currently displayed branded passive programming to indicate the availability of additional information associated with the currently displayed branded passive programming. A user is provided with an opportunity to select the alert icon to indicate a desire to access the additional information. In response to the user selection, an interactive display is provided on the user equipment that includes an advertisement associated with the brand of the branded passive programming.

The Examiner contends that Alexander provides branded passive programming with an advertisement associated with a brand inserted into the passive programming to the user equipment. *See* Office Action, page 4. The Examiner cites to a portion of Alexander that described automatically tuning a user to a particular advertising channel during the telecast of a television program. *See* Office Action, pages 4-5. The television may be automatically tuned back to the viewer's chosen television program after the advertisement is finished. *See* Alexander, col. 32, line 61 – col. 33, line 8. According to the Examiner, this feature meets applicants' claimed branded passive programming limitation. Applicants respectfully disagree and submit that the Examiner's interpretation is unreasonable.

III. Conclusion

For the foregoing reasons, applicants submit this application is in condition for allowance. Reconsideration and allowance are respectfully requested.

Respectfully submitted,



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EVIDENCE APPENDIX D
COPY OF ALEXANDER ET AL.
U.S. PATENT NO. 6,177,931

(x) Related Proceedings Appendix

None.